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Commission Opens Inquiry on)
Competitive Bidding Process for) WT Docket No. 97-150
Report To Congress)

Comments of Motorola, Inc.

Motorola, Inc. ("Motorola") hereby submits these comments in response to the above-captioned Public Notice issued by the Commission on July 2, 1997.¹ The Public Notice asks participants in prior FCC auctions, persons or entities planning to participate in upcoming auctions, and other interested parties to submit comments and information that will assist in preparation of the Commission's September 30, 1997, report to Congress on the agency's competitive bidding processes.

Motorola's comments are directed to the Commission's request for interested parties' observations and recommendations with respect to whether the competitive bidding process has facilitated the introduction of new technologies and the entry of new market participants.² On the basis of nearly 70 years of experience in the wireless telecommunications industry, Motorola offers the following suggestions as general guideposts to assist the Commission and Congress in improving the overall effectiveness of the competitive bidding process and in helping to ensure

¹ Public Notice, *Commission Opens Inquiry on Competitive Bidding Process for Report To Congress*, FCC 97-232, WT Docket No. 97-150 (July 2, 1997).

² *Id.* at 5-6.

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that the FCC's auction procedures do in fact promote – and do not inadvertently obstruct – the introduction of new wireless offerings and industry participants:

- ◆ First, as discussed in detail in its comments in the Wireless Communications Service (“WCS”) proceeding,³ Motorola is concerned that allocation decisions and service rules based on a desire to reduce the deficit as opposed to the needs of the market will unintentionally damage the wireless telecommunications industry by fracturing the marketplace and curbing investment in equipment and services. Significantly, the results of the WCS auction seem to confirm these concerns.⁴ Accordingly, Motorola strongly urges Congress and the Commission to avoid premising spectrum allocation decisions and related rules on a desire to generate revenue. Rather, in order for the wireless marketplace to continue developing successfully, it is imperative that spectrum management decisions be based on a thoughtful and careful analysis of market needs. Auctions must be viewed only for what they are – simply a means for resolving mutually exclusive applications in certain services. The auction process should not be used as the basis for spectrum allocation decisions or for the formulation of service and technical rules.
- ◆ Second, Motorola recommends that Congress and the Commission expressly limit the duration of freezes imposed in connection with spectrum auctions to some prescribed period, such as 180 days. The experience in the 800 MHz specialized mobile radio (“SMR”) service and in the paging context makes plain that the indefinite duration of freezes while auction rules are being developed has a deleterious impact on affected industry sectors and members of the public. An express limit on the length of auction-related freezes would help reduce this impact by injecting much needed certainty and stability into the regulatory process.
- ◆ Third, Motorola strongly counsels against post-auction changes in the FCC's auction rules and policies. Both Congress and the Commission have repeatedly recognized that strict enforcement of auction rules is essential in order for the competitive bidding process to serve its overall goal, which is to ensure that spectrum is awarded to those entities that will use it most effectively. In addition, after-the-fact modification of the auction rules would undermine the integrity of the Commission's auction procedures and unfairly prejudice those entities that formed their business plans based on the expectation that the FCC would enforce its own regulations.

³ See generally Comments of Motorola, Inc., GN Docket No. 96-228 (filed Dec. 4, 1996).

⁴ See, e.g., *WCS Auction Winners Still Unspecific About How To Use Spectrum*, Communications Today, June 30, 1997 (pointing out that most WCS auction winners still have not decided how their spectrum will be used, and noting that the WCS auction attracted only \$13.6 million in bids as opposed to an estimated \$1.6 billion).

- ◆ Fourth, Motorola urges Congress and the Commission to allocate spectrum for flexible use *only* if the Commission expressly finds that such flexibility will not fracture the market – *i.e.*, consistent with the language of the budget reconciliation bill recently approved by the House and Senate, spectrum should be allocated for flexible use only if: (1) such use is consistent with international agreements to which the United States is a party; and (2) the Commission finds, after notice and public comment, that (a) such an allocation would be in the public interest, (b) such use would not deter investment in communications services and systems or technology development, and (c) such use would not result in harmful interference among users. Flexibility should not be used merely to guide auction revenue.
- ◆ Finally, Motorola recommends that, in all stages of the auction process, Congress and the Commission endeavor to ensure that the spectrum needs of public safety entities, unlicensed consumer products, and private radio users are not jeopardized. Use of auctions injects a new legacy of costs upon the nation's telecommunications infrastructure and American consumers. A formerly free "good" of radio spectrum is now an added business expense, with auctions essentially constituting another "toll booth" on the telecommunications highway. These added costs present particularly grave concerns and challenges in making certain that public safety, unlicensed consumer products, and private radio needs are accommodated.

Motorola submits that the formulation of rules and policies consistent with these general guidelines will help improve the overall effectiveness of the competitive bidding process. In addition, actions consistent with these recommendations will help guarantee that the FCC's auction procedures do not inadvertently thwart the introduction and development of wireless

communications technologies or otherwise inhibit wireless operators from being able to provide services that address the varied needs of the public.

Respectfully submitted,

Motorola, Inc.

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Dated: August 1, 1997

CERTIFICATE OF SERVICE

I, Robin Walker, hereby certify that on this 1st day of August, 1997, a true copy of the attached "Comments of Motorola, Inc." has been served, via hand delivery, on the following persons:

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